

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOSHUA J. TRUEBLOOD,

Plaintiff,

v.

OFFICER SGT. CAPPOLA, *et al.*,

Defendants.

CASE NO. 3:19-cv-05816-RBL-JRC

ORDER ON MOTIONS FOR  
EXPERT WITNESS AND FOR  
SUBPOENAS

This matter is before the Court on plaintiff's motions for an expert witness and for subpoenas. *See* Dkts. 55, 56. Plaintiff's motion for an expert witness is denied and his motion for subpoenas is granted, as set forth below.

**I. Motion for Subpoenas**

Plaintiff requests that the Court issue subpoenas for witness testimony from other former prisoners at the institution where the alleged events took place. *See* Dkt. 55. Defendants oppose the request on the basis that the matter is not yet set for trial, that the Court has the "inherent

1 power” to refuse to order and serve *pro se* subpoenas, and that plaintiff has not provided  
2 sufficient information under Fed. R. Civ. P. 45 to issue a subpoena. *See* Dkt. 57.

3 Upon a party’s request, “[t]he clerk *must* issue a subpoena, signed but otherwise in  
4 blank[.]” Fed. R. Civ. P. 45(a)(3) (emphasis added). Typically, the requesting party would then  
5 complete the subpoena and serve it. *See* Fed. R. Civ. P. 45(a)(3). Federal Rule of Civil  
6 Procedure 45 contains detailed requirements for the form, contents, and service of such a  
7 subpoena, as well as the appropriate procedure for objecting to, moving to quash, or moving to  
8 modify a subpoena.

9 Plaintiff’s motion is interpreted as a request for the Clerk’s Office to issue a subpoena  
10 and is granted. Plaintiff should be aware that if his subpoenas impose an undue burden or  
11 expense on a person subject to a subpoena, the Court “must” impose an appropriate sanction on  
12 plaintiff. Fed. R. Civ. P. 45(d)(1). Plaintiff should also be aware that at present, no trial has  
13 been scheduled for this matter, and that the Court’s practice is to wait until after any dispositive  
14 motions have been filed and ruled upon before setting a trial date (if necessary).

15 The Clerk’s Office shall issue the appropriate blank subpoena forms to plaintiff.

## 16 **II. Motion to Appoint Medical Expert**

17 Plaintiff’s complaint brings deliberate indifference claims against various Department of  
18 Corrections employees on the basis that he was forced to wear sewage-contaminated shoes, even  
19 though employees knew that he had open cuts on his feet, and that he contracted hepatitis as a  
20 result. *See* Dkt. 9, at 12. No dispositive motions have yet been filed in this matter, although the  
21 deadline to do so is July 20, 2020. *See* Dkt. 34.

22 Plaintiff now requests that the Court appoint a medical expert to show that he contracted  
23 hepatitis from exposure to sewage in August 2019. *See* Dkt. 56. Defendants assert that a  
24

1 medical expert is not necessary because plaintiff has not provided any medical records or other  
2 information from which the Court can determine whether the issue requires a medical expert and  
3 because whether or not plaintiff contracted hepatitis is an issue related to the amount of possible  
4 damages, not whether defendants—who are not medical professionals—were deliberately  
5 indifferent to plaintiff’s serious medical needs. *See* Dkt. 58.

6 Federal Rule of Evidence 702 allows for an expert witness to testify about matters if,  
7 among other requirements, “the expert’s scientific, technical, or other specialized knowledge will  
8 help the trier of fact to understand the evidence or to determine a fact in issue.” Fed. R. Evid.  
9 702(a). Parties may call their own expert witnesses. In addition, Federal Rule of Evidence 706  
10 authorizes the Court to “order the parties to show cause why expert witnesses should not be  
11 appointed[.]” Fed. R. Evid. 706(a). The expert so appointed is entitled to such reasonable  
12 compensation as the court may allow, and, in a civil case, unless funds have been provided by  
13 law to pay the compensation, the compensation is “paid by the parties in such proportion and at  
14 such time as the court directs, and thereafter charged in like manner as other costs.” Fed. R.  
15 Evid. 706(b).

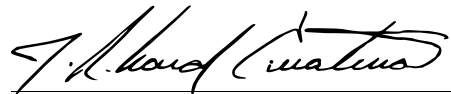
16 Here, plaintiff proceeds in forma pauperis and, presumably, is not able to compensate an  
17 expert witness. Nor does the *in forma pauperis* statute, 28 U.S.C. § 1915, either provide for the  
18 payment of fees and expenses for witnesses (*see Dixon v. Ylst*, 990 F.2d 478, 480 (9th Cir.  
19 1993)), or for the waiver of such fees and expenses. *See Hadsell v. Comm’r Internal Revenue*  
20 *Serv.*, 107 F.3d 750, 752 (9th Cir.1997). Under such circumstances, the district court has the  
21 discretion to appoint an expert and apportion all costs of compensation to one side. *See*  
22 *McKinney v. Anderson*, 924 F.2d 1500, 1511 (9th Cir.), *vacated and remanded on other grounds*,  
23 502 U.S. 903 (1991).

1 At this point in the proceedings, no dispositive motions have been filed, and the Court  
2 has not yet had the opportunity to review the parties' evidence and arguments in the context of a  
3 summary judgment motion. The Court finds that at this time, it is premature to decide whether  
4 the appointment of a medical expert is warranted because the Court has not yet reviewed whether  
5 the issues are so complex as to require the testimony of an expert to assist the trier of fact.  
6 Accordingly, plaintiff's motion for appointment of a medical expert will be denied without  
7 prejudice to plaintiff's renewing such motion, or the Court *sua sponte* considering such  
8 appointment, at an appropriate later date. *Accord Wallace v. Dep't of Corr.*, No.  
9 319CV05330RJBRC, 2019 WL 3944315, at \*1 (W.D. Wash. Aug. 21, 2019).

#### 10 CONCLUSION

11 The motion to subpoena witnesses is interpreted as a motion for subpoena forms and is  
12 granted. *See* Dkt. 55. The Clerk's Office shall provide plaintiff with four blank subpoena forms  
13 for a witness to appear and testify in a civil trial or hearing. The motion to appoint an expert  
14 witness (Dkt. 56) is denied without prejudice.

15 Dated this 20th day of July, 2020.

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19 J. Richard Creatura  
20 United States Magistrate Judge  
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